

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on January 26, 2001 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. Darrel Adams (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Jeff Mangan (D)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Ken Peterson (R)
Rep. Diane Rice (R)
Rep. Bill Thomas (R)
Rep. Merlin Wolery (R)
Rep. Cindy Younkin (R)

Members Excused: Rep. Bill Eggers (D)
Rep. Joan Hurdle (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 203 - 1-18-01**
HB 263 - 1-18-01
HB 315 - 1-18-01

Executive Action: HB 317 - 1-18-01
HB 203 - Table
HB 174 - DP
HB 317 - DP
HB 263 - DP
HB 256 - DPAA

HEARING ON HB 315

Sponsor: Rep. Dave Gallik, HD 52, Helena said this is a Bill to provide additional penalties for cruelty to animals and to provide reimbursement for the costs that are incurred as a result of cruelty to animals. Those costs would include feeding, housing, veterinary bills etc. This Bill has undergone a great deal of scrutiny and he has talked with many who are involved and concerned. This Bill is a collection of several different states' laws and based upon that and the unique Montana aspects, this Bill should include a Do Pass from this Committee and send it to the Committee on the whole with that recommendation.

Rep. Gallik and Mr. MacMaster have prepared some amendments, EXHIBIT(juh21a01) and explained them.

Proponents: Denise Tarr, President, Lewis and Clark Humane Society. **EXHIBIT(juh21a02)**

Linda Hughes, Director, Humane Society, Cascade County, **EXHIBIT(juh21a03)**

Tracey Hurd, Senior Animal Control Officer, Cascade County. **EXHIBIT(juh21a04)** Pictures were also shown.

Gina Wiest, Lewis and Clark Humane Society

Joan Anderson, self, Helena

Jane Heath, Circle of Life, Massage for Animals, Helena **EXHIBIT(juh21a05)** **EXHIBIT(juh21a06)**

Sandy Newton, Past Board Member and President, Lewis and Clark Humane Society, Helena.

Curt McAlpin, Helena Police Dept. Animal Control Officer, Clancy

Jane Benson, Board Member, Lewis and Clark Humane Society. **EXHIBIT(juh21a07)**

{Tape : 1; Side : A; Approx. Time Counter : 0 - 30}

Susan Cecnle, Lewis and Clark Animal Control

Betty Beverly, Foster care-taker of two mares. Helena

Tristen Shinnick, Helena

Penny Tushingham, Volunteer, Local shelter, Helena

Robin Layton, Helena

Tiffany David, Helena

Leslie Bracken, Helena

Renee Han Kowalski, Volunteer, Lewis and Clark County
Humane Society.

Gary Spaeth, Attorney, Chairman, Helena Humane
Society

Opponents: Steve Pilcher, Executive Vice President, Montana
Stockgrowers Association said he opposed the Bill as originally
drafted. He clarified that he is not opposed to the general
intent of the Bill. Cruelty to animals should not and cannot be
tolerated. However, the best attempts to address a legitimate
problem often catches others in the net. His concern that some
of the normal accepted activities associated with livestock
production might fall in that category. He has expressed his
concerns with the Sponsor who has presented the Committee with
proposed amendments that may well address these concerns.

John Semple, Montana Cattlewomen.

Trinity Vandenacre, Horse Racing Business, Townsend

Questions from Committee Members and Responses: Reps. Curtiss,
Gutsche, Noennig, Rice, Mangan, Younkin, Harris, Adams, Shockley,
Holden to Mr. Pilcher, Rep. Gallik, Ms. Hurd, Mr. Spaeth, Pam
Bucy, Department of Justice; Mr. McAlpin, for clarification and
concerns.

Rep. Younkin asked Mr. Pilcher if he saw anything in the Bill
that would create an avenue for groups advocating not using
animals for beasts of burden or for food. Mr. Pilcher said he
looked through the amendments, and amendment #9, page 2, proposes

to strike the language "or intentional pain is inflicted" as a recognition by the sponsor of the concern expressed. He is concerned there are at least two other areas that may follow in the category of the above situation. There are terms used that are undefined in this statute that he feels are very subjective. Line 20, page 2, uses the term "overworked" and a condition comes to mind of herding cattle when the weather is warm and the animals get heated up. Who is to determine if he has overworked the animals?

He is also concerned about such subjected terms, such as excessive pain, in view of groups as **Rep. Younkin referenced.**

Rep. Gallik said the answer to her concerns is an equivocal no.

{Tape : 1; Side : B; Approx. Time Counter : 0.1 - 28.5}

Closing by Sponsor: Rep. Gallik closed the Hearing on HB 315.

{Tape : 2; Side : A; Approx. Time Counter : 0.1 - 11.4}

HEARING ON HB 203

Sponsor: Rep. Bob Davies, HD 27, Bozeman, said this is a Bill inspired by talk of tort reform in the courts. Punitive damages in a suit can amount to no more than twice the amount of compensatory damages, which would also include attorneys' fees and expenses. This is an effort to try to reduce the potential for some huge lawsuits.

Proponents: None

Opponents: Don Judge, Montana State AFL-CIO said he is here to defend the rights of victims of actions that take place that not only have a detrimental but sometimes deadly impact on the citizens of Montana. He cited the W.R.Grace Co. and the Libby workers.

Scott Crichton, Executive Director, ACLU, Billings

Randy Bishop, Attorney, President, Montana Trial Lawyers Association, Billings. **EXHIBIT(juh21a08)**
EXHIBIT(juh21a09) **EXHIBIT(juh21a10)**
EXHIBIT(juh21a11) **EXHIBIT(juh21a12)**

{Tape : 2; Side : A; Approx. Time Counter : 11.4 - 29}

{Tape : 2; Side : B; Approx. Time Counter : 0.1 - 6.3}

Allen McGarvey, Attorney, Kalispell
EXHIBIT(juh21a13)

Gayla Benefield, Libby

Curt Simpson

Al Smith, Montana Trial Lawyers Association,
EXHIBIT(juh21a14) **EXHIBIT**(juh21a15)

{Tape : 2; Side : B; Approx. Time Counter : 6.3 - 17.5}

Questions from Committee Members and Responses: Reps. Harris, Younkin, Newman, Curtiss, Rice, Gallus, Peterson, Clark, Shockley, Gutsche to Rep. Davies, Mr. Bishop, Rep. Jent, Mr. McGarvey, Ms. Benefield, Mr. Simpson for clarification and concerns.

{Tape : 2; Side : B; Approx. Time Counter : 17.5 - 28.9}

{Tape : 3; Side : A; Approx. Time Counter : 0.1 - 9.7}

Closing by Sponsor: Rep. Davies closed the Hearing on HB 203 by saying he would challenge the legal community to address some of these issues. The number of frivolous suits that are filed are well-known.

HEARING ON HB 263

Sponsor: Rep. Larry Jent, HD 29, Bozeman said this Bill reviews the implied consent law that amends and explains the problem to be addressed. The Bill concerns the person who's license has been suspended for failure to take a DUI test, from having that hearing in their home county when they got arrested in another county. HB 263 would improve efficiency because cases would be dealt with in one jurisdiction rather than being spread over two different jurisdictions. Justice is still served because the defendant has the right to appeal that suspension but the hearing would occur where the crime actually occurred. This would be a judge hearing, not a jury hearing.

The implied consent law states that basically a person who operates a motor vehicle on a road open to the public, is considered implied or imputed and that there is a reasonable suspicion that the person is under the influence of alcohol. Under those conditions the officer could ask for a test. If at any of the tests of the officer's choosing, the driver says he doesn't want to take the test, the law says none shall be given but the driver's license is given up for six months. If the

person feels he has been wronged by the officer's call that there is a reasonable suspicion he is under the influence, he can ask for a hearing to get his license back. The issues at that hearing are whether the peace officer had reasonable grounds to believe the person was driving or was in actual physical control, whether he was under the influence of alcohol and whether he actually refused the test.

A fourth issue is whether the officer had reasonable grounds to stop the car. The judge determines those issues. The problem arises if the person lives in another county, they file a petition in their own county and then the county or city attorney has to travel to the driver's own county where the petition was filed. The solution is a simple amendment to statute striking the words in Subsection 1 of 61-8-403, after the words "the person resides in the county where the arrest was made" so the new statute would read "where the arrest was made" and in subsection 2 the new section would read "where the arrest was made as the venue", the legal location.

Proponents: Pam Bucy, Assistant Attorney General said this Bill was brought at the request of the Attorney General's office as well as county attorneys across the state. She cited an actual case.

Bert Obert, Colonel, Montana Highway Patrol

{Tape : 3; Side : A; Approx. Time Counter : 9.7 - 29.8}

Bob Wood, City Prosecutor, City of Helena

Troy McGee, Chiefs of Police Association, Helena

**Ken Dove, Sergeant, Billings Police Department,
representing Montana Detective's Association.**

Tom Butler, Officer, Montana Highway Patrol

David Cardillo, Billings Police Department

Opponents: None

Questions from Committee Members and Responses: Rep. Noennig to Rep. Jent.

Closing by Sponsor: Rep. Jent closed the Hearing on HB 263.

HEARING ON HB 317

Sponsor: Rep. Ken Peterson, HD 20, Billings said this Bill is designed to make law enforcement more efficient. As the law exists, presently, the highway patrol or any other peace officer that makes an arrest issues a citation, a notice to appear or a complaint. The law now requires that the officer issue a complaint that he signs and gives a copy to the offender. Then the officer has to find a notary public or go to the court and sign another document saying he signed that under oath.

This Bill would allow the officers to sign the ticket and that's all they have to sign.

Proponents: Pam Bucy, Assistant Attorney General
EXHIBIT(juh21a16) **EXHIBIT**(juh21a17)

Karen Bryson, City Court Clerk, Helena

Colonel Bert Obert, Montana Highway Patrol

Bob Wood, City Prosecutor, Helena

Troy McGee, Chief of Police, Montana Association of
Chiefs of Police, Helena.

Ken Dove, Montana Police Protective Association,
Billings.

Tom Butler, Montana Highway Patrol.

David Cardillo, Billings Police Department.

Opponents: None

Questions from Committee Members and Responses: Rep. Noennig to
Ms. Bucy for clarification.

Closing by Sponsor: Rep. Peterson closed the Hearing on HB 317.

{Tape : 3; Side : B; Approx. Time Counter : 0.1 - 23.7}

EXECUTIVE ACTION ON HB 203

Motion/Vote: REP. LASZLOFFY moved that HB 203 BE TABLED. #1
Motion carried unanimously 18-0.

EXECUTIVE ACTION ON HB 174

Motion/Vote: REP. GALLUS moved that HB 174 DO PASS. #2 Motion carried 16-1 with Rep. Mangan voting no.

EXECUTIVE ACTION ON HB 151

Motion: REP. NEWMAN moved that HB 151 DO PASS. #3

{Tape : 3; Side : B; Approx. Time Counter : 23 - 29.4}

Discussion: Reps. Newman, Mangan.

Motion: REP. MANGAN moved that HB 151 BE AMENDED. #4
EXHIBIT (juh21a18)

Discussion: Reps. Mangan, Newman

Vote: Motion on Mangan amendment passed unanimously 17-0.

Discussion: Rep. Shockley.

Motion: REP. SHOCKLEY moved that HB 151 BE AMENDED, the new language that begins on line 21 and ends on line 23, Page 4, the new language that begins on line 17 and ends on line 20,. On page 6, delete in Section 46-23-1012, anything that allows the probation officer to issue a warrant. #5

Discussion: Rep. Newman

Motion: REP. NEWMAN moved that HB 151 BE POSTPONED FOR FURTHER ACTION. #6

Discussion: Rep. Gallus to Mr. MacMaster for clarification.

{Tape : 4; Side : A; Approx. Time Counter : 13.4 - 29.3}

EXECUTIVE ACTION ON HB 317

Motion: REP. LASZLOFFY moved that HB 317 DO PASS. #7

{Tape : 4; Side : B; Approx. Time Counter : 0.1 - 8.5}

Discussion: Reps. Noennig, Peterson, Newman, Shockley.

Vote: Motion #7 carried unanimously 17-0.

EXECUTIVE ACTION ON HB 263

Motion: REP. YOUNKIN moved that HB 263 DO PASS. #8

Discussion: Reps. Rice, Younkin, Newman.

Vote: Motion #8 carried unanimously 17-0.

EXECUTIVE ACTION ON HB 256

Motion: REP. YOUNKIN moved that HB 256 DO PASS. #9

Motion: REP. YOUNKIN moved that HB 256 BE AMENDED. #10
EXHIBIT(juh21a19)

Discussion: Rep. Younkin explained the amendments. Rep. Harris complimented Rep. Younkin on her amendments.

Vote: Motion #10, Younkin amendments, carried unanimously 16-0.

Motion: REP. YOUNKIN moved that HB 256 DO PASS AS AMENDED. #11

Discussion: Reps. Younkin, Peterson, Gutsche, Newman, Noennig, Mr. MacMaster, Shockley, Clark, Adams.

Rep. Jent commented on HB 182 and HB 176 and how to handle them;

Vote: Motion carried on motion #11 unanimously 17-0

{Tape : 4; Side : B; Approx. Time Counter : 8.5 - 29.3}

{Tape : 5; Side : A; Approx. Time Counter : 0.1 - 12.0}

ADJOURNMENT

Adjournment: 12:10 P.M.

REP. JIM SHOCKLEY, Chairman

MARY LOU SCHMITZ, Secretary

JS/MS

EXHIBIT (juh21aad)